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8
9 UNITED STATES BANKRUPTCY COURT

10 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

11 In re

12 ALICIA MARIE RICHARDS,

13 Debtor.

Case No. 8:21-bk-10635-SC

Chapter 7

TRUSTEE’S OPPOSITION TO DEBTOR’S
MOTION TO ALTER OR AMEND ORDER
DENYING MOTION TO ABANDON ALL
KNOWN AND UNKNOWN CLAIMS

[Motion Docket No. 1542]

Date: September 12, 2023

Time: 11:00 a.m.

Ctrm: 5C – via ZoomGov

Address: 411 W. Fourth Street,
Santa Ana, CA 92701

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20 TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY JUDGE,

21 THE OFFICE OF THE UNITED STATES, DEBTOR, AND ALL INTERESTED PARTIES:

22 Richard A. Marshack, Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
23 Alicia Marie Richards (“Debtor”), files this opposition to Debtor’s *Notice of Motion and Motion to*
24 *Alter or Amend Order Denying Motion to Abandon All Estate Claims*, docketed on August 23, 2023,
25 as Docket No. 1542 (“Motion”).
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1 **1. Summary of Opposition**

2 Debtor fails to meet her burden to justify the Court reconsidering an order that has not even
3 been entered. As evidenced by her Motion, Debtor purposely misconstrues a narrowly-tailored
4 abandonment order in a bad faith attempt to weaponize it against the Trustee. The Motion is
5 frivolous, and the latest in a long series of bad faith litigation tactics by Debtor. The Motion must be
6 denied.

7 **2. Factual Statement**

8 On July 6, 2023, as Dk. No. 1457, a motion to compel Trustee to abandon all claims known
9 and unknown was filed by Debtor (“Abandonment Motion”). The hearing on the Abandonment
10 Motion was originally set for July 18, 2023, but was continued by request of Trustee to August 15,
11 2023.

12 On August 1, 2023, as Dk. No. 1510, Trustee filed an opposition to the Abandonment
13 Motion. To conserve judicial and estate economy, Trustee incorporates the detailed and lengthy
14 factual history set forth in his opposition.

15 On August 14, 2023, as Dk. No. 1517, Debtor’s request to continue the hearing on the
16 Abandonment Motion was docketed.

17 At the hearing on August 15, 2023, Debtor orally requested a continuance of the hearing on
18 the Abandonment Motion, and the request was denied. Additionally, the Court found that oral
19 argument would not be necessary on the six pending motions or objections before the Court (five
20 initiated by Debtor and one by Trustee), and issued its rulings on the record without oral argument.

21 On August 23, 2023, as Dk. No. 1539, Trustee lodged a proposed order on the Abandonment
22 Motion with a notice of lodgment.

23 On August 23, 2023, as Dk. No. 1542, Debtor filed the Motion, seeking to alter or amend the
24 Court’s decision on the Abandonment Motion.

1 **3. Legal Argument**

2 **A. Relief under Rule 60(b) is unwarranted.**

3 “On motion and just terms, the court may relieve a party or its legal representative from a
4 final judgment, order, or proceeding for the following reasons:

- 5 (1) mistake, inadvertence, surprise, or excusable neglect;
6 (2) newly discovered evidence that, with reasonable diligence, could not have been
7 discovered in time to move for a new trial under Rule 59(b);
8 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct
9 by an opposing party;
10 (4) the judgment is void;
11 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment
12 that has been reversed or vacated; or applying it prospectively is no longer equitable; or
13 (6) any other reason that justifies relief.

14 Fed. R. Civ. Proc. 60(b) (made applicable to bankruptcy cases under FRBP 9024).

15 “To qualify for equitable relief under Rule 60(b)(1), the movant must demonstrate ‘mistake,
16 inadvertence, surprise, or excusable neglect.’” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1043
17 (9th Cir. 1992). An additional requirement for relief under Rule 60(b)(1) is the existence of a
18 meritorious argument. *See TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691, 696-97 (9th
19 Cir. 2001) (“If, however, the defendant presents no meritorious defense, then nothing but pointless
20 delay can result from reopening the judgment.”). “Rule 60(b)(6) should be ‘used sparingly as an
21 equitable remedy to prevent manifest injustice’ and ‘is to be utilized only where extraordinary
22 circumstances prevented a party from taking timely action to prevent or correct an erroneous
23 judgment.’” *Zurich American Insurance Co. v. International Fibercom, Inc. (In re International
24 Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). “As 60(b)(6) is a catchall provision, relief under
25 that section should be for a reason beyond those elsewhere enumerated by the Rule.” *United States v.
26 Turner*, 2022 U.S. Dist. LEXIS 89423 at *8 (S.D. Cal. May 17, 2022).

27 The Motion contains a series of meandering arguments that conclude that Debtor is entitled
28 to relief. Debtor only vaguely recites the language contained in FRCP 60(b)(1) as her statutory basis
for relief. There is no relevant analysis to granting relief under FRCP 60(b)(1), in that Debtor fails to
articulate any mistake, surprise, or excusable neglect on her part which resulted in the denial of the
Abandonment Motion. *See United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210

(B.A.P. 9th Cir. 2006) (“The issue is not whether the bankruptcy court made a mistake... Instead, the focus is on [Movant].”). Debtor has also failed to articulate any extraordinary circumstances requiring relief under FRCP 60(b)(6). Indeed, the Abandonment Motion sought abandonment of unspecified claims, both known and unknown. Because Debtor failed to sufficiently describe any claims to be abandoned, she could not have met her burden to compel abandonment of any claim, and the Court properly denied Debtor’s motion.

4. Conclusion

The Motion is meritless and must be denied. Trustee respectfully requests that the order lodged on August 23, 2023, be entered.

DATED: August 29, 2023

MARSHACK HAYS LLP

By: /s/ Tinho Mang

D. EDWARD HAYS

TINHO MANG

General Counsel for Chapter 7 Trustee,
RICHARD A. MARSHACK

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
870 Roosevelt, Irvine, CA 92620.

A true and correct copy of the foregoing document entitled **TRUSTEE'S OPPOSITION TO DEBTOR'S MOTION TO ALTER OR AMEND ORDER DENYING MOTION TO ABANDON ALL KNOWN AND UNKNOWN CLAIMS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **August 29, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **August 29, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR

ALICIA MARIE RICHARDS
SANTA ANA JAIL M-88
ALICIA MARIE RICHARDS 2300000041
P.O. BOX 22003
SANTA ANA, CA 92702

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **August 29, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY:

PRESIDING JUDGE'S COPY

HONORABLE SCOTT C. CLARKSON
UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA
RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE
411 WEST FOURTH STREET, SUITE 5130 / COURTROOM 5C
SANTA ANA, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 29, 2023

Date

Cynthia Bastida

Printed Name

/s/ Cynthia Bastida

Signature

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** CONTINUED:

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4895-4289-7524, v. 1